IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2008

CORAM:

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE V.DHANAPALAN

WRIT APPEAL No.269 OF 2000

1. The Deputy Inspector General
   Central Industrial Security Force
   Southern Zone,
   Rajaji Bhavan
   Besant Nagar, Chennai-90

2. The Director General
   Central Industrial Security Force,
   13, C.G.Os.Complex,
   Lodhi Road,
   New Delhi-3 ... Appellants/ Respondents in W.P.16171/92

Vs.

S.Ambigapathy ... Respondent/ Petitioner in W.P.16171/92

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge of this court dated 3.12.1999 made in W.P.No. 16171 of 1992 Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records connected with the orders of the Director General (CISF) New Delhi as the second respondent herein issued in No.V-14013/68/84/A L & R/1232 dated 30.9.92 confirming the orders of the first respondent in No.C-17023/MPT/01/80-INT/SZ/7 dated 3.5.1980 and quash the said orders.

For Appellants : Mr.M.S.Govindarajan,

For Respondent : Mr.P.V.S.Giridhar

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J U D G M E N T

V.DHANAPALAN,J.

This Writ Appeal has been preferred against the order of the learned Single Judge, dated 3.12.1999, passed in W.P.No: 16171/92, whereby the learned Judge allowed the Writ Petition filed by the respondent herein, and set aside the order of the first appellant and directed reinstatement of the respondent with all backwages, attendant benefits and continuity of service from the date of his dismissal from service till he is reinstated.

2. The aforesaid order was canvassed in this Appeal and by judgement dated 5.9.2003, a Division Bench of this Court allowed the appeal setting aside the order of the learned Single Judge. The Division Bench while setting aside order passed in the Writ Petition had considered the following aspects, viz., that the appellant, Central Industrial Security Force is an armed force wherein discipline is of the utmost importance; the respondent committed the acts of indiscipline in consort with others establishes the deliberate intent of the respondent to disobey the rules, which includes deliberate absence from parade, acts of insubordination to the commands of the superior officers and shouting of rebellious slogans; retention of persons who indulge in such acts will but set a poor example to others in the organisation who have not indulged in such acts; the rigour of the discipline is bound to be diluted, thereby having an adverse impact upon the efficiency of the organisation itself; the Industrial Security Force is meant to safeguard all public sector installations and it can illafford to have among its members persons who are indisciplined and who do not hesitate to defy the orders of the superiors and desist from performing duties, which are essential for keeping the unit efficient and useful.

3. As the above said judgement had been rendered ex parte, without hearing the counsel who was on record for the respondent, who did not represent the case on the date of hearing, the respondent engaged the present counsel and preferred WAMP.No:3491 of 2005 to condone the delay of 669 days in filing the petition to set aside the ex parte judgement dated 5.9.2003. Accepting the reasons assigned by the respondent, by order dated 4.1.2006, the First Bench of this Court allowed the said WAMP, set aside the ex parte judgement and ordered for revival of the Writ Appeal for de novo consideration.

4. Heard Mr.M.S.Govindarajan, learned counsel appearing for the appellants and Mr.P.V.S.Giridhar, learned counsel appearing for the respondent.

5. Learned counsel for the appellants submitted that in the instant case, the respondent herein along with other security personnel have committed grave misconducts of deliberate absence from parade, acts of insubordination to the commands of the superior officers and shouting of rebellious slogans; retention of persons

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etc., which are against the Central Industrial Security Force Rules, 1969. Learned counsel also submitted that as per Rule 37(b) of the Central Industrial Security Force Rules, 1969, holding of the departmental enquiry is dispensed with. According to the learned counsel, the Central Industrial Security Force being a disciplined Force, considering the grave misconducts of the respondent, which includes raising rebellious slogans against the Deputy Inspector General of the Force, the first appellant has rightly imposed the punishment of dismissal from service which is in proportion with the misconducts committed by him.

6. In response, learned counsel for the respondent contended that in the absence of any departmental enquiry, the allegations cannot be held to be proved and even assuming so, the punishment of dismissal from service is disproportionate to the gravity of allegations. Ultimately, learned counsel for the respondent prayed this court to show indulgence as the petitioner has been out of employment from the date of his dismissal from service and if he is in service, he would be retiring by March, 2009.

7. To countenance the above submission, learned counsel for the appellants, Central Industrial Security Force, submitted that the grave misconducts being unauthorised absenteeism from attending the parade; indulging in various acts of discipline viz., rebellious slogans, wilful and deliberate acts of insubordination, disobedience of the orders of the superior officers, neglect and violation of his duties and threat of violence, the appellate authority has rightly set out the reason that since the misconducts are collective action by the group in which the respondent has also participated, the procedure prescribed to hold a departmental enquiry by serving a written charge sheet etc., under Rules 34, 35 and 36 of the Central Industrial Security Force Rules, 1969 would be a futile and it is not reasonably practicable to hold such an inquiry, the petitioner cannot insist for a departmental enquiry. In support of his submission, learned counsel referred to the rulings of the Apex Court in Union of India Vs. Tulsiram Patel (1985(7) SLR 576(SC), wherein it has been held that in a situation where violent atmosphere prevailed, accompanied with acts of general indiscipline and insubordination, holding general regular inquiry was not reasonably practicable. In that context, the Supreme Court held thus:-

> "The respondents in C.A.No:3484 of 1982, were members of the CISF. They were pressing for recognition of their Association an in view of the negative attitude of the authorities hey resorted to wilful and deliberate disobedience of orders of the supervisory officers, insubordinate and ghero of such officers, hunger strike, dharna, shouting of rebellious slogans and threats of violence and bodily harm to the officers and intimidation of those officers as well as loyal members of the staff resulting in a total breakdown of discipline in the Force. All these acts amounted to a mutiny in the Force with the result that Army had to be called out and a pitched battle took place between the Army and the members of the Force. The respondents were

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thereupon dismissed from the Force after dispensing with the disciplinary enquriy by applying R.37(b) of the CISF Rules read with Clause (b) of the second proviso to Art.311(2). It is clear that in the fact situation of this case holding of the enquiry was not at all reasonably practicable. Therefore, R.37(b) and the second proviso were correctly applied. Here was a case very much like a case under S.149, IPC. The acts alleged were not of any particular individual actin by himself but were of a large group acting collectively with the common object. It is not possible in a situation such as this to particularise the acts of such individual member who participated in the commission of these acts. The participation of each individual may be of greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk".

8. Learned counsel for the respondent also relied on the judgement of the Apex Court in Indian Railway Construction Co.,Ltd., Vs. Ajay Kumar, reported in (2003) 4 SCC 579, to contend that the order of dismissal is violative of Art.311(2) of the Constitution viz., principles of natural justice has not been followed since the appellate authority has not conducted any departmental enquiry before inflicting the punishment of dismissal from service and thus the petitioner was prevented from defending the allegations of grave misconducts. It is also contended that the reason recorded by the appellate authority for the impracticability of holding a departmental enquiry is not proper and the same having not been canvassed or dealt with by the learned Single Judge, the proper course would be to direct the authorities to hold an enquiry. In that context, the Supreme Court observed as under:-

"The power to dismiss an employee by dispensing with an enquiry is not to be so exercised as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the court to substitute its view for that of the disciplinary authority as if the court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry"....The High Court has not examined the question as to practicability or otherwise of holding the enquiry in the correct perspective. They have proceeded on the footing as if the order was mala

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fide; even when there was no specific allegation of mala fides and without any specific person against whom mala fides were alleged being impleaded in the proceedings. Except making a bald statement regarding alleged victimization and mala fides, no specific details were given. The approach of the High Court, therefore, was not proper. But at the same time, the reasons which weighed with the disciplinary authority to dispense with enquiry equally do not appear to be proper".

9. Residually, Learned counsel for the respondent also placed reliance on the judgement of the Apex Court in Arjun Chaubey Vs. Union of India, reported in AIR 1984 SC 1356, and contended that the order of dismissal is illegal as it suffers for want of jurisdiction since the same has been passed by Raja Sreedharan, Deputy Inspector General (South Zone) of the Central Industrial Security Force, against whom the alleged rebellious slogans were raised and therefore, the DIG who had been nurturing a grudge against the respondent, cannot sit in his own cause and decide the issue. In the said decision, the Apex Court observed;-

> "The order of dismissal was illegal on the ground that the order was passed by the Superintendent after considering the explanation himself which violated the principles of natural justice. The main thrust of the charges against the employee related to his conduct qua the Superintendent. Therefore, it was not open to the Superintendent to sit in judgement over the explanation offered by the employee and decide that the explanation was untrue. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Any one who had a personal stake in the enquiry must have kept himself aloof from the enquiry". (emphasis supplied)

10. As regards the contention of impracticability of conducting the departmental enquiry, it is not in dispute that the first respondent has recorded reason that since the misconducts have been committed by the respondent along with other members, which is a collective action, recourse to normal procedure of serving charge memo and holding of a regular departmental enquiry would be futile, we are of the considered view that to arrive at a decision on reasonableness, the court has to find out whether the first respondent has left out relevant factors or taken into account irrelevant factors. The decision of the first respondent must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

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11. It is not in dispute that the respondent belonging to a

disciplined force has to act with a sense of discipline and decorum. In the name of presenting demands, they cannot hold the employer to ransom. If an act or omission of an employee reflects upon his character, reputation, integrity or devotion to duty or is an unbecoming act, certainly the employer can take action against him. In this context, reference may be made to the following observations of Lopes,C.J., in Pearce V. Foster (1886-90) All ER Rep.Ext.1752:

> "If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

The above view was reiterated by a three Judge Bench of the Apex Court in Union of India Vs. K.I.Dhawan, reported in (1993) 2 SCC 56.

12. It is evident from the provision contained in Section 37(b) of the Central Industrial Security Force Act, which prescribes the procedures to be followed in certain cases of misconduct, which interalia contains "notwithstanding anything contained in Rule 34, Rule 35 or Rule 36, where a penalty is imposed on a member of the Force, where the disciplinary authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to allow the procedure prescribed in the said Rules, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deem fit.

13. A careful reading of the above provision would make it clear that the procedures contemplated for imposing major penalties, minor penalties and petty penalties respectively under Rules 34,35 and 36, if the authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedures prescribed in the said rules he can dispense with the usual procedures contemplated under the Act. In the instant case, admittedly, the authority has recorded reasons for not following the procedures and dispensed with the procedures contemplated while imposing the punishment. Therefore, it is not necessary to remit the matter with a direction to the disciplinary authority to conduct an enquiry.

14. Placing reliance on the decision of Arjun Chaubey, referred to earlier, it was argued by the learned counsel for the respondent that the charges are only general in nature apart from vague and not definite and it only says that slogan and abuses were hurled upon Mr.Raja Sreedharan, Deputy Inspector General of the CISF. But the very same Officer has proceeded and passed the order of dismissal. It is argued that when the Officer is in the position of a witness, he cannot sit over on his own decision when the charge itself is relating to him and therefore, it cannot be said that he was free

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from bias in passing the order of dismissal and on that ground the dismissal is vitiated. It is evident that as against the order of dismissal, dated 3.5.1980, the respondent preferred an Appeal to the Director General, CISF, New Delhi and the appeal was also dismissed by order dated 11.3.1981.

15. However, the respondent had the grievance that without providing an opportunity, the appellate authority considered the appeal and therefore approached this Court by filing the WP.No:1822 of 1994. This Court while setting aside the order of dismissal passed against him by the appellate authority, by order dated 9.3.1992, remitted back the matter to the appellate authority for rehearing and disposal in accordance with law.

16. On such remittal, the respondent was again directed to appear before the Director General of CISF at New Delhi on 22.9.1992 and he was heard in person by the Appellate Authority with the help of an interpreter and after hearing the respondent and finding that there ware overwhelming evidence against the him, by the impugned order dated 30.9.1992, the Appellate Authority dismissed the appeal. Aggrieved of the said order, the present Writ Petition has been preferred by the respondent.

17. It is also not in controversy that though rebellious slogans were raised and written slogans were pasted against the disciplinary authority, namely, Sree Raja Sreedharan, IPS (DIG, CISF), he had not witnessed the same and hence he is not in the position of a witness. It is also not in dispute that a charge memorandum, dated 24.4.1980, with regard to the misconduct of the respondent was issued on 28.4.1980. But it is the respondent who refused to receive the charge memo and such refusal was also recorded. Therefore, the order of dismissal passed by the disciplinary authority after recording the reasons for the impracticability of non compliance of Rules 34,35 and 36 is not in any way contrary to the Rules. It is also to be taken note of that when the order passed by the appellate authority was set aside and remitted back for rehearing, the respondent had not demanded any enquiry as observed by this Court in its judgment dated 9.3.1992. Further, on remittal, considering the facts and circumstances of the case, the directions issued by this Court, the evidence on records, the submissions of the respondent at the time of rehearing, the appellate authority has dismissed the appeal by passing a speaking order on 30.9.1992.

18. To decide the competency of the Disciplinary Authority to pass the order of dismissal and the power of the appellate authority, we have to necessarily look into the Central Industrial Security Force Act, 1968 and the Rules framed thereunder. Section 8 of the Act deals with dismissal, removal etc., of a member of the force, wherein it is specifically contemplated that "subject to the provision of Art.311 of the Constitution and to such Rules as the Central Government may make under this Act, any Supervisory Officer may (i) dismiss or remove or reduce in rank any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty or unfit for the same; or (ii) award anyone or more of the

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following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner or who act of his own renders himself unfit for the discharge thereof, (a) fine to any amount not exceeding seven days' pay or reduction in pay scale; (b) drill, extra guard, fatigue or other duty; (c) removal from any office of distinction or deprivation of any special emolument".

19. Under Section 9 of the Act, it is provided that "any enrolled member of the Force aggrieved by an order made under Section 8 may, within 30 days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of sub section (3), the decision of the said authority thereon shall be final.

20. It is definite under the Act that the "Supervisory Officer" means any of the Officer appointed under Section 4 and any other officer appointed by the Central Government as a Supervisory Officer of the Force. Therefore, the disciplinary authority for the purpose of this case is that any supervisory officer as contemplated under Section 4, which clearly indicates that the Central Government may appoint a person to be a Director General of Force and may appoint other person to be Inspector General, Deputy Inspector General, Commandant, Deputy Commandants or Assistant Commandants of that Force. Therefore, the Officer who has framed the charges and proceeded against is the Deputy Inspector General of the Force who is in a supervisory cadre, namely Disciplinary Authority as provided under Rule 29-A and Schedule II specified in that behalf.

21. The only allegation against the Disciplinary Authority appears to be that the respondent has raised slogans against him and therefore, he cannot sit on his own decision in a matter where he himself is related to the incident. Therefore, a specific plea is raised that the order of the disciplinary authority naturally cannot be free from bias. A Constitutional Bench of the Supreme Court in the case of Arjun Chaubey Vs. Union of India, reported in AIR 1984 SC page 1356, referred to earlier, held that an order of dismissal is illegal if the same is passed by the disciplinary authority after considering the explanation himself which would be violative of the principles of natural justice as it was not open to him to sit in judgement over the explanation offered by the employee and decide that the explanation was untrue. Applying the well settled legal maxim, that no person could be a Judge in his own cause, we hold that in the case on hand, it is not open to the Deputy Inspector General, CISF, to decide the misconduct of the respondent who raised rebellious slogan against the Deputy Inspector General, CISF and pass the punishment of dismissal from service. Any one who had a personal stake in the enquiry must have kept himself aloof from the enquiry.

22. An analysis of the above, clearly ruled that no person could be a Judge in his own cause and no witness could certify that his testimony was proved. Therefore, the charge of a misconduct relating to himself after considering by himself to the explanation

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of the employee cannot be held to be proper and the same is in violation of principles of natural justice. Section 8 of the CISF Act stipulates that dismissal, removal etc., of members of the Force shall be subject to the provision of Art.311 of the Constitution. In this case, the facts and circumstances of the case would reveal that the Disciplinary Authority himself has sit over on his own cause. Therefore, there cannot be a fairness and reasonableness in the exercise of the powers exercised by him as the Disciplinary Authority and hence, there is a clear violation of Art.311 of the Constitution of India, namely, principle of natural justice, and therefore the order of dismissal passed by the Disciplinary Authority cannot be sustained.

23. In the light of the above discussion and on a careful consideration of the Constitution Bench ruling of the Supreme Court and on a consideration of the relevant Sections in the Act and the Rules in question, though the CISF is an Armed Force of the Union of India, wherein discipline is of paramount importance and the Disciplinary Authority as well as the Appellate Authority have viewed the matter as if the respondent is an indisciplined person, they have decided not to retain him in the Force, an there being no quarrel over the above ethical value and the maintenance of discipline in the armed Force, at the same time, we hold that while the authority who is competent to decide the award of punishment, it is necessary for him to follow the procedures contemplated under Act and there must be a strict adherence to the Rule of Law. The authority who intended to maintain the discipline must be the follower and must give strict adherence to the Rule of Law also. The legitimate expectation of every one is that before the delinquent is to be punished, he must be provided with an opportunity and it is the ordained principle that if there is any action contrary to the principles of natural justice, the rudimental concept of adhering to the principle is to be followed which is the foundation of fairness and impartiality in the action of the authority concerned. Therefore, we feel that the authorities below have not at all followed the procedures contemplated in Section 8 of the Act before imposing the punishment. Therefore, in the light of the above position, it is corollary to follow the procedure as contained in Section 8 of the Act. In consequence, it is proper for this Court to direct the appellants to appoint an independent disciplinary authority who is in the same rank of Deputy Inspector General of the said Force, and proceed independently taking into consideration of the facts and circumstances of the case and the material evidence available and also the relevant provisions of the Act and the Rules of CISF and pass appropriate orders, in accordance with law, within a period of two months from the date of receipt of a copy of this judgement, as the respondent is left with only four months of service.

24. We, accordingly set aside the order of dismissal, dated 3.5.1980 passed by the disciplinary authority, namely, the Deputy Inspector General, CISF, Southern Zone, Chennai, as well as the order of confirmation, dated 30.9.1992, passed by the appellate authority, namely, the Director General of CISF, New Delhi. However, we make it clear that we are not in agreement with the reasoning of

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the learned Single Judge in its entirety and therefore, interfere and modify the order of the learned Single Judge to the extent indicated above.

25. The Writ Appeal is allowed in part with a direction to the appellants as stated above. But, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gkv

To

1. The Deputy Inspector General
   Central Industrial Security Force
   Southern Zone, Rajaji Bhavan
   Besant Nagar, Chennai-90

2. The Director General
   Central Industrial Security Force,
   13, C.G.Os.Complex,
   Lodhi Road, New Delhi-3

1 cc to Mr.P.V.S. Giridhar, Advocate, SR. 65036

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